



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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MEMORANDUM

TO: Regional Air Directors

FROM: Adam Kushner, Director
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RE: MACT Compliance Options for Plywood and Composite Wood Products
Sources Needing More Time to Install Air Pollution Controls

This letter discusses an issue regarding the time frame for compliance by plywood and composite wood products (PCWP) facilities with EPA standards that were recently partly remanded and vacated by the United States Court of Appeals for the District of Columbia Circuit. As explained below, we encourage State permitting authorities to develop proposed permits to grant temporary compliance relief to PCWP sources that demonstrate the need and eligibility for 1-year extensions under 40 CFR section 63.6(i).

On June 19, 2007, the District of Columbia Circuit remanded and vacated portions of EPA's maximum achievable control technology (MACT) standards promulgated at 40 CFR part 63, subpart DDDD. Among other things, the Court ruled that EPA must re-impose the October 1, 2007 existing source compliance deadline. As a result, certain PCWP facilities have unexpectedly discovered that they will need more time to install controls to meet EPA's PCWP MACT regulation. Affected sources and Clean Air Act (CAA) title V permitting authorities may, therefore, wish to consider availing themselves of the options discussed below to address situations where sources have recently found themselves subject to a MACT compliance deadline falling earlier than they had previously anticipated.

Background

EPA first promulgated the PCWP MACT rule on July 30, 2004 (69 FR 45944). In that rulemaking, EPA established MACT control requirements for numerous process units located at PCWP facilities, and imposed a MACT compliance date for existing

sources of hazardous air pollutants (HAP) of October 1, 2007. EPA also created a "low-risk" subcategory of PCWP sources, which included sources meeting statutory and regulatory criteria that would have allowed them to avoid MACT compliance requirements. Under the 2004 PCWP MACT rule, sources could have joined the low-risk subcategory on a case-by-case basis, provided that they submitted low-risk demonstrations and received EPA approval of those demonstrations before the MACT compliance date arrived.

The Natural Resources Defense Council (NRDC) submitted an administrative petition to reconsider the 2004 PCWP rule's low-risk provisions, and filed a petition for judicial review in the District of Columbia Circuit. In 2006, EPA promulgated amendments to the 2004 PCWP MACT rule, focusing on provisions governing would-be low-risk sources' demonstrations that they are eligible to join the low-risk subcategory and thereby avoid compliance with MACT. EPA viewed these regulatory amendments as being sufficiently substantial and significant to trigger EPA's authority under section 112(i)(3)(A) of the CAA to establish a new MACT compliance date for existing sources, and the Agency re-set the PCWP MACT compliance date at October 1, 2008.

On June 19, 2007, the District of Columbia Circuit granted NRDC's petition for judicial review and remanded and vacated EPA's creation and de-listing under CAA sections 112(c)(1) and (c)(9)(B) of the low-risk subcategory, as well as EPA's re-setting of the MACT compliance deadline for existing sources. EPA is required to remove from its regulation the low-risk provisions that would have allowed PCWP sources to join the low-risk subcategory and avoid MACT, and must re-impose the 2004 PCWP rule's originally promulgated October 1, 2007, existing source compliance deadline. The rest of the rule remains in effect. This means that following the Court's ruling, more PCWP sources than first expected will have to meet the PCWP MACT, and on a faster schedule than they had expected under the 2006 amendments to the PCWP Rule.

Relief Options

EPA has learned from representatives of PCWP sources and from State air program staff that many PCWP sources believe they will be hard-pressed to meet the October 1, 2007 compliance date. Significantly, these sources will now need to obtain, install, and operate equipment that would not have been required until 2008 under the 2006 rule, and that might not have been necessary at all for sources who could have met the vacated low-risk criteria. These representatives have further explained that there are a limited number of vendors for providing, installing, and testing necessary pollution control equipment. EPA appreciates the concerns raised by PCWP sources faced with unanticipated looming compliance obligations, and offers the following suggestion for such sources that can show they need more time to install controls:

Under CAA section 112(i)(3)(B), States with approved title V permit programs may issue permits “that grant an extension permitting an existing source up to 1 additional year to comply with [MACT] standards . . . if such additional period is necessary for the installation of controls.” In *NRDC v. EPA*, while the Court rejected EPA’s re-setting of the compliance deadline in the 2006 amendments to the PCWP Rule, it noted that section 112(i)(3)(B), “addressed EPA’s concern by authorizing . . . source-by-source extensions[.]”

EPA’s regulations implement this authority at 40 CFR sections 63.6(i)(4) and (i)(6)-(16), and set forth requirements for when compliance extensions must be submitted, what information they must include, and how and under what deadlines they must be processed by permitting authorities. Notably, 40 CFR sections 63.6(i)(4)(i)(B) and (C) provide that requests must be submitted no later than 120 days prior to the affected source’s compliance date, except where the need for the compliance extension arose after that date and beyond the source’s control, and the source instead submits its request before the applicable compliance date.

In the case of PCWP sources, the general deadline to submit an extension request regarding the October 1, 2007 compliance deadline that EPA must re-impose following the Court’s ruling would have been June 3, 2007 – more than two weeks before the Court issued its ruling. Prior to that ruling, source owners and operators assumed in good faith that EPA’s revised October 1, 2008 deadline applied. The Court’s remand and vacatur of that revised deadline was beyond PCWP sources’ control. Therefore, EPA expects that PCWP sources should be able to meet the conditions of 40 CFR section 63.6(i)(4)(i)(C) that allow sources to submit their requests after the date 120 days in advance of the compliance deadline.

Similarly, EPA expects that it should be fairly straightforward for many sources to show that they will need more time to install air pollution controls needed to comply with the PCWP MACT. While some PCWP sources may already have arranged with vendors for installation and operation of controls, or may have chosen compliance options under the rule that might not necessitate installing further controls, such as emissions averaging or the production-based compliance option, EPA expects that the vast majority of PCWP sources will need to install new controls to meet MACT.

Provided PCWP sources submit nonfrivolous compliance extension requests that meet the applicable criteria of 40 CFR sections 63.6(i)(4) and (6), EPA encourages State title V permitting authorities who develop proposed permits to grant such extensions and to work with their relevant EPA Regions to resolve situations where PCWP sources have unexpectedly found themselves subject to a MACT compliance deadline that is now just weeks away. We further note that under 40 CFR section 63.6(i)(4)(i)(C), timely submitted nonfrivolous requests will stay the applicability of the rule for subject emissions points until such time as the request is granted or denied. For further information, please contact Scott Throwe in EPA’s Office of Enforcement and Compliance Assurance at throwe.scott@epa.gov or (202) 564-7013.

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